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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

ENE/155064

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 22, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Kenosha County Human Service Department in regard to Energy Assistance (EA), a hearing was held on February 27, 2014.

The issue for determination is whether the agency has met its burden to show that petitioner received all the EA to which she is entitled.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Administration  
101 East Wilson Street  
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Representative  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

## **FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County.
2. On January 7, 2014 petitioner applied for EA.
3. Petitioner's monthly household income includes \$819 in Social Security, \$2514.58 in rental income, and \$208 from Encore Furniture, totaling \$3541.58 monthly.
4. Petitioner was awarded \$60 in heating assistance and \$0 in electric assistance.

## **DISCUSSION**

Energy Assistance (EA) is a state-run program established by federal law. See 42 USC § 8621, et seq. and Wis. Stat. §16.957. Eligibility depends upon a household's income not exceeding 60% of the state average. See Wis. Stat. §16.957 and *Wisconsin Home Energy Assistance Program, Program and Operations Manual* (Manual), §2.3.1 available online at <http://homeenergyplus.wi.gov/docview.asp?docid=24957&locid=25>. Unless the applicant is a seasonal worker or self-employed, financial eligibility is based upon the household's gross income during the three months before the application date. See *Manual* §2.3.2. For income received from interest, dividends, tribal per capita payments, seasonal work, and self-generated income, the test period is based on the gross amounts received during the twelve months prior to the date of the application, or the previous tax year. *Id.*

Petitioner's arguments at hearing were that she is making mortgage payments directly from her rental income and therefore her income is not accurately represented when those payments are not deducted from her gross income. Unfortunately for petitioner, the agency is instructed to allow no deductions from gross income for employment-related expenses, childcare, medical expenses, *or for any other reason*, except as specifically identified in the *Manual*. *Id.* Additionally, the *Manual* states that garnishments removed from income are not an allowable deduction from income. *Id.* The only allowable deductions include: child support paid; Medicare--Part B Premiums; Supplemental Security Income Exceptional Expense (SSI-E); Adoption Assistance; Social Security Act Title IV-E Fund; assets (any personal asset sold in any of the three months prior to application, withdrawals from the principal of interest/dividend earning accounts as savings accounts, stocks, U.S. Treasury Bonds, etc., annual lump-sum withdrawals from an IRA account before the account owner is 70 years old, capital gains); dividends, interest, royalties; earned income for minors; Flex Dollars; General Relief; Government Payments and Program Participation Income; AmeriCorps income; base pay of military personnel called to temporary active duty; foster care payments for minor(s); Title V Senior Community Service Employment Program (formerly Green Thumb); payments to volunteers under Title II (RSVP, Foster grandparents and other) and Title III (SCORE and AGE) of the Domestic Volunteer Services Act of 1973 (P.L.93-113); Youth Incentive Entitlement Pilot Projects; Uniform Relocation Assistance and Property Acquisition Policy Act of 1970 (P.L. 92-646, section 216); Alaska Native Claim Settlement Act (P.L. 92-203, Section 21(a); sub-marginal land of the United States held in trust for certain Indian tribes (P.L. 94-114, Section 6); retroactive DEFRA payments; Payments made under P.L. 100-383 Wartime Relocation of Citizens; monies received as a result of P.L. 101-41, Puyallup Tribe of Indians Settlement Act of 1989; Veteran's Aid in Attendance; certain government payments are counted income when the annual amount is equal to or greater than \$120; DNR Programs that pay royalties (e.g. Stumpage); USDA Programs (e.g. crop disaster relief programs); Agriculture Programs (e.g. CRP); in-kind income; benefits received from the supplemental food program for Women, Infants and Children (WIC); FoodShare Benefits; Kinship Care; Land Rent Income; loans received in the previous three months; Lump Sum Payments; Income tax refunds (paid in lump sums or weekly); Rebates; Earned Income Credits (EIC); Employer new-hire sign-on bonus; US military reenlistment bonus; Insurance settlements; Estate Inheritances; Trust funds; Refunds of Security deposits on rental property or utilities; Retroactive Social Security, Public Assistance or unemployment compensation payments; Severance pay; Tax intercept; Homestead Tax Credit; money

received by a disabled person specifically to allow him or her to live in their own home; Non-household member costs; Payments made to a third party (e.g., rent payments paid by a relative who is not a household member, payments by a government agency to a child caring institution providing day care for a household member, or payments of a household's medical bills made directly to a hospital by an insurance company); Refunds & Overpayments; Reimbursements; Student Income or Support; and Tribal Per Capita. *Id.* at §§2.3.8 and 2.3.9.

There is no evidence to suggest that petitioner's income requires any of these deductions. And while I understand it may not seem fair to the petitioner that the income and available deductions are counted the way they are, I lack the equitable powers to grant the relief sought. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). Therefore, I will uphold the EA determination. Petitioner is reminded that she can always reapply.

### **CONCLUSIONS OF LAW**

The agency has met its burden to show that petitioner received all the EA to which she is entitled per her January 7, 2014 application.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Administration. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 101 East Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 6th day of May, 2014

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 6, 2014.

Kenosha County Human Service Department  
DOA - Energy Assistance